IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3087 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOPALBHAI N SHAH

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 3087 of 2001
PARTY-IN-PERSON for Petitioner No. 1
MS SONA SAGAR for Petitioner No. 1
MR ANIL N MEHTA for Petitioner No. 1
MS SHALINI S MAIR for Petitioner No. 1
Mr.Mukesh Patel, learned AGP, for Respondent No. 1-3,5
Mr.A.J.Patel, senior counsel, with
MR SHITAL R PATEL for Respondent No. 4
MR AMIT M PANCHAL for Respondent No. 6
MR DEEPAK P SANCHELA for Respondent No. 7-18
MR ANAND L SHARMA for Respondent No. 11-13

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 07/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. The grievance of the petitioner in this petition is that a plot, which is to be used for residential premises, is being illegally and unauthorisedly converted into commercial purposes and the residential house, which was constructed earlier, was sold out by the original owner of the plot, who has purchased the plot in auction from the Government, and the said residential house was disposed off in favour of the respondent No.4 and the said house was demolished and construction of shop etc. was done by converting the use of the premises for commercial purpose and accordingly the petitioner has approached this court for seeking direction that the respondent No.4 be directed to take steps for demolition of the said unauthorized construction as according to the petitioner that there is no amendment in Sector 22 site plan and still said site is exclusively residential zone and accordingly further prayed that the respondent No.4 be restrained from using S.No.493/2 for the commercial purpose.

2. Petitioner has filed this petition under his affidavit dated 26.4.2001 and annexed certain documents and as per the order passed by the learned single Judge on 18.6.2001, the court has permitted the petitioner for joining Secretary (Appeals), Revenue Department as respondent No.5 and the notice to respondents were made returnable on 9.7.2001. Thereafter, the matter was placed from time to time and the learned single Judge has as per order dated 16.8.2001 while passing a detailed order issued rule. The order passed by the learned single Judge reads as under:-

"Heard the learned advocate. Leave to implead Gandhinagar Urban Development Authority as Res-No.5. Rule. Admittedly, the construction in question has been made without submitting the building Plans to the concerned authority and

without obtaining sanction for the same. Pending this petition, Res-No.4 and any person claiming through him is restrained from putting the construction in question to any use. It is further directed that the petitioner also shall not use his building/premises for any purpose other than the residential purpose and shall stop any commercial activity that may have been started in the said residential premises. The Res-No.1 and Res-No.5 shall be responsible to ascertain that this direction is scrupulously carried out."

3. Heard petitioner in person, who in turn has taken us through the petition and the documents attached thereto and the reply affidavit filed in this proceedings and we have also perused the orders passed in this proceedings by the court from time to time.

4. As found from the record, Smt.Kapilaben Patel Respondent No.4 has challenged the order passed by the Collector, Gandhinagar dated 18.3.2000 in which she was called upon to pay penalty as well as to remove the unauthorized construction. The said order was challenged by her by preferring Revision Application before the State Government and in the said Revision Application, which was admitted initially, status quo order was granted and thereafter the order of status quo was vacated by the Government as per order dated 14.6.2000, against which the petitioner has preferred Special Civil Application No.7708 of 2000. The challenge before the High Court was that the authority has without giving opportunity vacated the order of status quo as on the hearing day the advocate appearing for the respondent No.4 has filed sick note and the said order is against the principles of natural justice and the reply submitted by the petitioner was not considered and prayer in the petition was that till the Revision Application was finally decided and disposed off she may be protected. Dealing with the said petition, the learned single Judge has in term dismissed the petition in limine by discharging the notice and interim relief granted earlier was vacated and the learned single Judge has in term observed that the land, which was granted to the petitioner, was for construction of residential house and it is undisputed fact that the petitioner has instead of constructing the house, constructed shop and a Hall as found from the show cause notice and accordingly the construction carried out by the respondent No.4 was admittedly unauthorised construction and the interim

relief granted earlier pending Revision Application would not be justified and accordingly vacated the ad interim relief. While dismissing the Special Civil Application considering the request of the advocate for extension of order of status quo, the same was extended upto 23.2.2001. We have perused the order passed by the learned single Judge dated 6.2.2001 as well as the order passed by the Collector, Gandhinagar dated 18.3.2000, which is Annexure "N" to this petition. Against the order passed by the learned single Judge respondent No.4 Smt.Kapilaben Patel filed Appeal being Letters Patent Appeal No.110 of 2001 and the Division Bench has as per order dated 28.2.2001 by recording the statement of the counsel appearing for the appellant passed the order, which we reproduce as under:-

> "Learned advocate for the appellant has made a statement, under instructions, that the appellant, original petitioner, would like to avail the remedy before the Competent Authority in view of the subsequent notification dated 9.10.2000. In this context, permission to withdraw the petition is sought. Learned advocate Ms. Shalini Mair appearing for respondent No.3, upon caveat, has, also, no objection. In the circumstances, appellant-original-petitioner is permitted to withdraw the petition and, consequently, the appeal for availing or resorting to the remedy in the light of the notification of the Government of Gujarat dated 9.10.2000, before the Competent Authority. Accordingly, the main petition shall stand disposed of as having been withdrawn. Consequently, the appeal, also, does not survive."

5. As transpired from the record that the Collector, Gandhinagar under his order dated 18.3.2000 has passed order against Smt.Patel respondent No.4 herein by imposing penalty and directed her to remove the unauthorised construction from the plot by granting 30 days time as well as directed the respondent No.4 to stop the commercial use by giving 30 days time, against which the Revision Application was filed before the State Government and against the vacation of the status quo order, Special Civil Application was filed which was also dismissed and against which the Letters Patent Appeal was filed, which was ultimately disposed off by the Division Bench, as above.

6. During hearing the petitioner in person has demonstrated before us by taking us through the documents attached to the petition to show that respondent No.4 has put the construction unauthorisedly and the construction was carried out in a residential zone by converting into commercial purpose. It is the case of the petitioner that the petitioner has purchased the land bearing S.No.493/1 situated in Sector No. 22 at Gandhinagar admeasuring about 35 Sq.Mts., which he has purchased in the year 1976. After the plot was purchased, he has constructed the residential house on the said plot and he is residing in the said building. The adjoining plot being Plot No.493/2 admeasuring 187.50 Sq.Mts. was initially purchased by one Shri Vaghela, who has also after obtaining sanction from the Competent Authority put construction and constructed a residential house. Shri Vaghela, the owner of the house, has sold the said property to Smt. Kapilaben Patel - Respondent No.4 herein under a Sale Deed in the year 1996. The grievance of the petitioner is that the plot, which was purchased by respondent No.4 under sale deed, is situated in a residential zone and respondent No.4 has purchased the house from original owner Shri Vaghela. An application was submitted before the Chief Town Planner, R & B Department, Gandhinagar by Shri I.B.Vaghela for seeking permission for removal of existing house on the plot and sought permission for new construction afresh on the plot. According to the petitioner that the Application was submitted by Shri Vaghela on 21.3.1997. Shri Vaghela is not party to this proceedings. Considering the application of Shri Vaghela, the permission was granted by the authority under letter dated 12.5.1997 and the said letter is annexed in the affidavit in reply filed by Shri V.D.Vaghela, Senior Town Planner, Gandhinagar Respondent No.6 herein. The authority has granted permission on certain conditions. Though Shri I.B.Vaghela was not the owner of the plot and the residential house, who had disposed of his property in favour of respondent No.4 Smt. Kapilaben Patel in 1996 under Sale Deed, the Application for seeking permission was made by Shri Vaghela on 21.3.1997 and Shri Vaghela has sought for permission for demolition of the old house for putting new construction on the plot of land. Admittedly the said plot falls within the residential zone. After the permission was granted for demolition of the said house, Smt. Kapilaben Patel has started construction on the said plot with the help of the builder named in the petition. It is, therefore, clear that the original owner of the plot Shri Vaghela has disposed off the plot with the house under Sale Deed in

favour of respondent No.4 in 1996 and inspite of that the respondent No.4 has submitted application to the authority in the name of original owner Shri Vaghela. As found from the order passed by the Collector as well as it is an admitted fact that the construction put on the said plot was against the building bye-laws. It is also the case of the petitioner that while respondent No.4 was constructing on the said plot, the property of the petitioner was also damaged and the petitioner has also approached the authority by highlighting the manner in which the respondent No.4 has put up the unauthorized construction on the said plot and on the complaint filed by the Petitioner, the Circle Inspector had also inspected the site and he has made report. As per the report submitted by the Circle Inspector, it is found that by putting the construction by respondent No.4, the wall of the petitioner was also damaged, who is the holder of the plot No.493/1. The construction carried out by respondent No.4 shows that he has committed breach of condition No.8. The Collector has also passed order against Smt. Kapilaben Patel respondent No.4 in respect of the construction, which was carried out on the plot of land, and she was directed to maintain the plot on the same condition and the construction, which was carried out, was suspended. It was further informed to Smt. Kapilaben Patel that for any breach of stay order, she is liable for prosecution under the provisions of I.P.C. and if activity of unauthorized construction is not stopped, the same will be removed for which the cost undertaken will be recovered from her under the provisions of the Land Revenue Code. It is, therefore, very clear that the construction, which was carried out by respondent No.4, was unauthorized and Smt. Kapilaben Patel was directed to carry out the construction as per sanctioned plan.

7. As found, reply affidavit is filed by the respondent authority and the counter affidavit is also filed by the petitioner in this proceedings and in their affidavits they have also annexed the documents and one of the documents is in respect of unauthorized construction, which was carried out by respondent No.4 on the plot of land, for which a question was also raised before the Legislative Assembly and it was also highlighted that the construction, which was carried out by respondent No.4 on the plot of land, was unauthorized.

8. The learned single Judge has dealt with the petition filed by the petitioner Smt. Kapilaben Patel in Special Civil Application No.7708 of 2000, where she has challenged the order passed by the Collector dated

18.3.2000 in which the Collector has directed Smt. Kapilaben Patel to remove all unauthorized construction put up on the plot of land and also imposed penalty. Against the said order passed by the Collector, Smt. Kapilaben Patel has preferred Revision Application before the State Government in which while admitting the Revision Application initially protection was granted in favour of respondent No.4 by maintaining status quo, which was an ex parte order and the said ex parte order of maintaining status quo was vacated on 14.6.2000 and Smt.Patel has accordingly filed the said petition, which was dismissed. Against the said order passed by the learned single Judge dismissing the Special Civil Application, Smt. Patel has filed Letters Patent Appeal and the said Letters Patent Appeal was disposed off on the ground that Smt. Patel will take steps to avail remedy in pursuance to the Notification issued by the Government on 9.10.2000 by making representation and accordingly Special Civil Application itself was disposed off as withdrawn and Appeal filed by her was also treated as not surviving.

9. As transpired from the record and the documents attached thereto, it is an undisputed fact that the property in question is purchased by respondent No.4 Smt. Kapilaben Patel from Shri Vaghela under a Sale Deed and a permission was sought for, for demolition of the structure found on the land by making application in the name of original owner Shri Vaghela. After the permission was granted, respondent No.4 has not carried out the construction as per the permission, which was granted to her and the respondent No.4 had on the said plot constructed shops, which is not permissible. Mr.A.J.Patel, learned senior advocate, appearing for the said respondent has conceded to this fact that the construction, which was made, was not as per the permission granted. Mr.Patel has also submitted that in view of the Notification issued by Government on 9.10.2000, Kapilaben has requested for approaching the competent authority by making representation and the permission was sought for withdrawal of the petition and accordingly the Appeal filed by Kapilaben was also disposed off. In view of the Notification issued by Government on 9.10.2000, an application (representation) was submitted to GUDA on 27.8.2001 in prescribed form i.e. to the Chief Executive Officer, GUDA, Gandhinagar for seeking permission for development in respect of Plot No.493/2 Sector No.22 at Gandhinagar. The said Application is annexed in the affidavit of Shri Vaghela, Senior Town Planner dated 12.2.2002. Shri Vaghela has also annexed various documents in his reply affidavit.

In respect of the application submitted by respondent No.4, the Assistant Town Planner, GUDA had intimated Smt.Kapilaben about her application dated 27.8.2001 in which she has sought permission for development by informing her that her application is rejected by highlighting reasons for such rejection. The communication to respondent No.4 is in a printed form and the reason for rejecting the application was highlighted by putting tick marks on Items Nos.6, 8 and 9. Item No.9 was incorporated by writing, which shows that one of the reasons is that the matter is subjudice in the Court and further steps will be taken after the decision in the said matter. The Collector has issued show cause notice to respondent No.4 for unauthorized construction on the land bearing Plot No.493/2 in Sector No.22, Gandhinagar. As there was no compliance by respondent - authority for removal of the said unauthorised construction found on the plot and as there was also conversion of the said plot from residential purpose to commercial purpose and as the property of the petitioner is just adjacent to the property in which respondent No.4 has put construction unauthorisedly, accordingly petitioner has approached this court for seeking relief for removal of such unauthorized construction. It is further found from the record of the case and as found from the submission made before us that the proceedings were initiated by respondent No.4 Smt.Kapilaben Patel in respect of the order passed by the Collector for which earlier order of status quo was granted ex parte and subsequently the order maintaining status quo was vacated. Being aggrieved by the said order of vacating status quo passed by the Collector, Smt. Patel has moved the State Government by filing Revision Applications. As found that there are two Revision Applications filed before the State Government being Revision Application No.2 of 2002 and Revision Application No.5 of 2002.

10. Mr. Amit Panchal, learned advocate appearing for respondent authority, has also taken us through the affidavits filed in this proceedings by highlighting the stand of the Department and as found that the authority has rejected the application earlier.

11. Mr.A.J.Patel, learned senior counsel, appearing for the respondent No.4 has vehemently urged that the petition filed by the petitioner be dismissed as according to him that in respect of the claim of the petitioner for damage caused to his property, respondent No.4 has parted money and petitioner was paid compensation. Mr.Patel has also vehemently urged that in view of the Notification issued by the Government on

16.2.2004 under Gujarat Town Planning and Urban Development Act, 1976, respondent No.4 has recently applied by making application to Senior Town Planner, GUDA, Gandhinagar on 2.7.2004. Mr.Patel has also submitted for our perusal the said application submitted by Smt. Kapilaben Patel to the said authority on 2.7.2004. The copy further shows that the concerned authority has received the Application on the very day i.e. on 2.7.2004 as there is a signature of Mr. Solanki with the Rubber Stamp of the office. Copy of the said application is also taken on record and the same is also furnished to the petitioner and the other counsel, who are appearing in this proceedings. As found from the application that respondent No.4 has approached the authority and as the same is received by the said authority, we presume that the said application must be pending for consideration before the authority.

12. Mr. Amit Panchal appearing for respondent No.6 has contended before us that earlier application of respondent No.4 was already dealt with by the authority and the same was rejected and the decision was intimated to her. He further states that he is not having any file from the Department and in view of the order dated 23.6.2004 the authority is required to take action in accordance with law in the matter.

13. In light of these facts and as the matter is pending since 2001 and respondent No.4 had recently approached the authority by relying upon the Notification issued by the Government dated 16.2.2004 under the Gujarat Town Planning and Urban Development Act, we are of the view that there is no use to keep this matter pending further. Even according to respondent No.4, the construction, which was constructed on the plot of land, is unauthorized and further that the Revision Applications filed by respondent No.4 are pending. As per the order passed by the authority, respondent No.4 was directed to remove the unauthorized construction from the plot of land. The application submitted by respondent No.4 recently on 2.7.2004 is pending for consideration and accordingly we are not expressing anything on the subject (i.e. merits of the matter) as according to us the Senior Town Planner, to which the application is made, is required to decide the same in accordance with law by examining all aspects, including the maintainability of such application. Mr.A.J.Patel has submitted before us that as now the fresh application dated 2.7.2004 is filed before respondent authority, he is also not seeking any relief in a pending Revision Application filed before the Government being Revision

Application No.2 of 2002 and Revision Application No.5 of 2002. Considering this background and without expressing anything in respect of the contentions raised before us and once the application submitted by respondent No.4 Smt. Kapilaben Patel is pending before respondent No.6, it will be in the fitness of things to direct the respondent No.6 to dispose off the said application as expeditiously as possible in accordance with law. The respondent No.4 Smt.Kapilaben Patel seeks regularization of the construction put up on the plot of land as per the Government Notification issued under the Town Planning and Urban Development Act on 16.2.2004. The authority shall accordingly decide the said application as expeditiously as possible in accordance with law and if it is found that no relief can be available to respondent No.4 Smt. Kapilaben Patel, the authority shall see that the said unauthorized construction is removed immediately subject to the order of the appellate authority. Mr. Amit Panchal appearing for respondent No.6 has also submitted before us that while considering the application by the authority, the authority has to invite objections from the affected persons and as found that the petitioner has approached this court for seeking direction of removal of unauthorized construction on the plot of land put up by respondent No.4, the authority shall also examine the case put forward by petitioner while considering the application submitted by Smt. Kapilaben Patel respondent No.4 in accordance with law. The petition is accordingly disposed off with the above directions. Rule is accordingly decided in the above terms. The cost of the petition is to be borne out by respondent No.4.

(D.K.Trivedi,J)

(K.M.Mehta,J)

arg